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LIM AH MOY & ANOR.

v.

PING AH GAIK & ANOR.

HIGH COURT MALAYA, ALOR SETAR

LIM BENG CHOON J

b

[CIVIL SUIT NO. 281 OF 1982]

13 DECEMBER 1986

TORT: Road accident - Cyclist knocked down by motorcar while trying to cross road - Injury to cyclist - Died following day - Whether cyclist contributorily negligent.

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DAMAGES: Quantum - Loss of future earnings - Appropriate earnings of deceased not specific - Years of purchase where deceased carrying on a strenuous business - Deductions - Savings.

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This action was brought by the administrators of the estate of the deceased for the benefit of his dependants under s. 7 of the Civil Law Act 1956. The deceased was knocked down by a motorcar driven by the 1st defendant while he was trying to cycle across the road, from the left edge to the right side. The accident took place on 9 September 1981, as a result of which the cyclist died the next day. The plaintiffs' witness and the defendant's witness gave two completely incompatible versions of how the accident occurred.

Prior to his death, the deceased was selling cakes which he made himself with the assistance of the 1st plaintiff.

*e***Held:**

[1] The accident was due wholly to the negligent driving of the 1st defendant.

[2] The loss of earnings was estimated at RM800 per month. The deceased was 41 years of age at the time of his death. In view of the strenuous nature of the deceased's work, the learned Judge allowed a purchase of 9 years.

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(i) Pre-trial loss from the time of accident to the date of the trial, a period of 63 months, amounted to RM50,400 with interest of 4% per annum from date of the accident to the date of trial and thereafter at 8% per annum until realisation.

(ii) Post-trial loss was calculated by deducting 5 years from the 9 years' purchase leaving a multiplier of 4 years with a multiplicand of RM800, yielding RM34,041.12 according to the annuity table.

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[3] Special damages were agreed at RM2,540 with interest of 3% per annum from date of accident to date of trial and thereafter at 8% per annum until realisation.

[4] The grand total of RM86,981.12 was rounded up to RM87,000, from which was deducted RM3,000 savings which deceased had at the time of death, thus leaving a sum of RM84,000 to be apportioned amongst the dependants.

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[Judgment with costs to plaintiffs.]

Case referred to:

Karthiyanani & Anor v. Lee Leong Sin & Anor. [1975] 1 MLJ 119

Legislation referred to:*i*

Civil Law Act 1956, ss. 7, 8

For the plaintiffs - Choe; M/s Syarikat Choe

For the defendants - B. Murali; M/s. James Foong & Anad

JUDGMENT

Lim Beng Choon J:

Liability

It is not unusual in a running down case that there are two versions of how the accident took place and the version of the plaintiff would invariably be incompatible with the version of the defendant. This is what happened here although the issue is simple namely whether one Tang Min Choo, deceased (the deceased cyclist) did in fact suddenly try to cycle across from the left edge of Jalan Sungei Korok as one faces Alor Setar to the right side of that road and encroached onto the path of the motorcar PX 1739 driven by the 1st defendant when the said car was only about 35'-40' away from him thereby giving no chance for the 1st defendant to take any evasive action to prevent the accident.

Notwithstanding that the plaintiff's witness, PW2, and the defendant's witness, DW1 in their respective evidence gave two completely incompatible versions of how the accident occurred nevertheless on a careful scrutiny of the totality of the evidence in particular the documentary evidence like the sketch plan, Exhibit P3 and the key P3K, the photographs of the scene of the accident, Exhibit D4A, B, C and D4F, F and the agreed bundle of documents Exhibit "A", I am satisfied that it was due wholly to the negligent driving of the 1st defendant that caused the accident. I therefore hold the 1st defendant 100% liable for the accident.

Quantum:

Although the action was originally brought by the plaintiffs as administration of the Estate of Tang Min Choo for the benefit of the Estate under s. 8 of the Civil Law Act 1956, and also for the benefit of the dependants of the deceased, the learned Counsel for the plaintiffs informed me that the plaintiffs abandoned the "estate claim" and confined their claim only for the benefit of the dependants under s. 7 of the said Act.

The accident took place on 9 September 1981 and as a result of the accident the deceased cyclist died on the next day. At that time he was 41 years old and prior to its death he was in good health. He left behind:

- | | | | | |
|-----------------------|---|-------------------------|---|----------|
| (i) Lim Ah Moy | - | widow and 1st plaintiff | - | 35 years |
| (ii) Tang Boon Ping | - | son | - | 14 years |
| (iii) Tang Boon Hai | - | son | - | 12 years |
| (iv) Tang Boon Kiang | - | daughter | - | 10 years |
| (v) Tang Boon Siam | - | daughter | - | 9 years |
| (vi) Tang Boon Hean | - | son | - | 7 years |
| (vii) Tang Boon Leong | - | son | - | 3 years |

Prior to his death the deceased was carrying on a business of selling cakes which he himself made with the assistance of the 1st plaintiff. Unfortunately the evidence of the 1st plaintiff was not quite specific or altogether clear as to the exact or even approximate earnings of the deceased. However I find that she was an ordinary and simple person and on her evidence I find that a loss in the region of RM800 per month is a fair figure. The deceased was 41 years of age at the time of his death and in carrying out his business of making cakes for sale which to my mind would be quite strenuous I allow a purchase of 9 years. With these figures in mind I award the following sums:

- a** 1. Pre-trial loss at RM800 per month for the period 9 September 1981 to 7 December 1986 roughly 63 months which will amount to RM50,400 with interest of 4% per annum from date of the accident to the date of trial and thereafter at 8% per annum until realisation.
2. Post-trial loss calculated by deducting roughly 5 years from the 9 years' purchase leaving a multiplier of 4 years with a multiplicand of RM800 which according to the annuity table will amount to RM34,041.12.

- b** 3. Agreed special damages RM2,540 with interest of 3% per annum from date of the accident to date of trial and thereafter at 8% per annum until realisation.

c The grand total of the above sums comes to RM86,981.12 and I shall round it up to RM87,000. As the 1st plaintiff in her evidence said that at the time of death the deceased had some savings amounting to RM3,000.00 the sum must be deducted from the total amount of award of RM87,000 thus leaving a sum of RM84,000 (see *Karthiyanani & Anor. v. Lee Leong Sin & Anor.* [1975] 1 MLJ 119) which shall be apportioned amongst the dependants as follows:

d	(i) Lim Ah Moy	-	entitled to one third	RM28,000
	(ii) Tang Boon Ping	-	10%	RM 5,600
	(iii) Tang Boon Hai	-	10%	RM 5,600
	(iv) Tang Boon Kiang	-	15%	RM 8,400
	(v) Tang Boon Siam	-	25%	RM14,000
	(vi) Tang Boon Hean	-	15%	RM 8,400
	(vii) Tang Boon Leong	-	25%	<u>RM14,000</u>
				<u>RM84,000</u>

e I award the sum of RM14,000 to Tang Boon Siam as the 1st plaintiff in her evidence said that this daughter has a hole in her heart and would require an operation which no doubt would be quite expensive. I further order costs of this proceeding to be paid by the defendants to the plaintiffs. All money's due to minors to be deposited with the Public Trustee with liberty to apply.

f Costs to be taxed.

Also found at [1987] 2 CLJ 55

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